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2                                   A bill to be entitled

3       An act relating to the state minimum wage; amending s.  
4       95.11, F.S.; providing periods of limitations on actions  
5       for violations of the Florida Minimum Wage Act; creating  
6       s. 448.110, F.S., the Florida Minimum Wage Act; providing  
7       legislative intent to implement s. 24, Art. X of the State  
8       Constitution in accordance with authority granted to the  
9       Legislature therein; requiring employers to pay certain  
10      employees a minimum wage for all hours worked in Florida;  
11      incorporating provisions of the federal Fair Labor  
12      Standards Act; requiring the minimum wage to be adjusted  
13      annually; providing a formula for calculating such  
14      adjustment; requiring the Agency for Workforce Innovation  
15      and the Department of Revenue to annually publish the  
16      amount of the adjusted minimum wage; providing criteria  
17      for posting; requiring the agency to provide written  
18      notice to certain employers; providing a deadline for the  
19      notice to be mailed; providing that employers are  
20      responsible for maintaining their current addresses with  
21      the agency; requiring the agency to provide the department  
22      with certain information; prohibiting discrimination or  
23      adverse action against persons exercising constitutional  
24      rights under s. 24, Art. X of the State Constitution;  
25      providing for civil action by aggrieved persons; requiring  
26      aggrieved persons bringing civil actions to provide  
27      written notice to their employers alleged to have violated  
28      the act; providing information that must be included in  
29      the notice; providing a deadline by which an employer

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alleged to have violated the act must pay the unpaid wages in question or resolve the claim to the aggrieved person's satisfaction; providing a statute of limitations period; providing that aggrieved persons who prevail in their actions may be entitled to liquidated damages and reasonable attorney's fees and costs; authorizing additional legal or equitable relief for aggrieved persons who prevail in such actions; providing that punitive damages may not be awarded; providing that actions brought under the act are subject to s. 768.79, F.S.; authorizing the Attorney General to bring a civil action and seek injunctive relief; providing a fine; providing statutes of limitations; authorizing class actions; declaring the act the exclusive remedy under state law for violations of s. 24, Art. X of the State Constitution; providing for implementation measures; designating ss. 448.01-448.110, F.S., as part I of ch. 448, F.S.; providing a part title; providing for severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) is added to subsection (2) and paragraph (q) is added to subsection (3) of section 95.11, Florida Statutes, to read:

95.11 Limitations other than for the recovery of real property.--Actions other than for recovery of real property shall be commenced as follows:

(2) WITHIN FIVE YEARS.--

(d) An action alleging a willful violation of s. 448.110.

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59       (3)    WITHIN FOUR YEARS.--

60       (q)    An action alleging a violation, other than a willful  
61 violation, of s. 448.110.

62       Section 2.   Section 448.110, Florida Statutes, is created to  
63 read:

64       448.110   State minimum wage; annual wage adjustment;  
65 enforcement.--

66       (1)    This section may be cited as the "Florida Minimum Wage  
67 Act."

68       (2)    The purpose of this section is to provide measures  
69 appropriate for the implementation of s. 24, Art. X of the State  
70 Constitution, in accordance with authority granted to the  
71 Legislature pursuant to s. 24(f), Art. X of the State  
72 Constitution.

73       (3)    Beginning May 2, 2005, employers shall pay employees a  
74 minimum wage at an hourly rate of \$6.15 for all hours worked in  
75 Florida. Only those individuals entitled to receive the federal  
76 minimum wage under the federal Fair Labor Standards Act and its  
77 implementing regulations shall be eligible to receive the state  
78 minimum wage pursuant to s. 24, Art. X of the State Constitution  
79 and this section. The provisions of ss. 213 and 214 of the  
80 federal Fair Labor Standards Act, as interpreted by applicable  
81 federal regulations and implemented by the Secretary of Labor,  
82 are incorporated herein.

83       (4) (a)   Annually on September 30, the Agency for Workforce  
84 Innovation shall calculate an adjusted state minimum wage rate by  
85 increasing the state minimum wage by the rate of inflation for  
86 the 12 months prior to September 1. In calculating the adjusted  
87 state minimum wage, the agency shall use the Consumer Price Index

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88 for Urban Wage Earners and Clerical Workers, not seasonally  
89 adjusted, for the South Region, or a successor index as  
90 calculated by the United States Department of Labor. Each  
91 adjusted state minimum wage rate shall take effect on the  
92 following January 1, with the initial adjusted minimum wage rate  
93 to take effect on January 1, 2006.

94 (b) The Agency for Workforce Innovation and the Department  
95 of Revenue shall annually publish the amount of the adjusted  
96 state minimum wage and the effective date. Publication shall  
97 occur by posting the adjusted state minimum wage rate and the  
98 effective date on the Internet home pages of the agency and the  
99 department by October 15 of each year. In addition, to the extent  
100 funded in the General Appropriations Act, the agency shall  
101 provide written notice of the adjusted rate and the effective  
102 date of the adjusted state minimum wage to all employers  
103 registered in the most current unemployment compensation  
104 database. Such notice shall be mailed by November 15 of each year  
105 using the addresses included in the database. Employers are  
106 responsible for maintaining current address information in the  
107 unemployment compensation database. The agency shall not be  
108 responsible for failure to provide notice due to incorrect or  
109 incomplete address information in the database. The agency shall  
110 provide the Department of Revenue with the state minimum wage  
111 rate information and effective date in a timely manner.

112 (5) It shall be unlawful for an employer or any other party  
113 to discriminate in any manner or take adverse action against any  
114 person in retaliation for exercising rights protected pursuant to  
115 s. 24, Art. X of the State Constitution. Rights protected  
116 include, but are not limited to, the right to file a complaint or

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117 inform any person of his or her potential rights pursuant to s.  
118 24, Art. X of the State Constitution and to assist him or her in  
119 asserting such rights.

120 (6) (a) Any person aggrieved by a violation of this section  
121 may bring a civil action in a court of competent jurisdiction  
122 against an employer violating this section or a party violating  
123 subsection (5). However, prior to bringing any claim for unpaid  
124 minimum wages pursuant to this section, the person aggrieved  
125 shall notify the employer alleged to have violated this section,  
126 in writing, of an intent to initiate such an action. The notice  
127 must identify the minimum wage to which the person aggrieved  
128 claims entitlement, the actual or estimated work dates and hours  
129 for which payment is sought, and the total amount of alleged  
130 unpaid wages through the date of the notice.

131 (b) The employer shall have 15 calendar days after receipt  
132 of the notice to pay the total amount of unpaid wages or  
133 otherwise resolve the claim to the satisfaction of the person  
134 aggrieved. The statute of limitations for bringing an action  
135 pursuant to this section shall be tolled during this 15-day  
136 period. If the employer fails to pay the total amount of unpaid  
137 wages or otherwise resolve the claim to the satisfaction of the  
138 person aggrieved, then the person aggrieved may bring a claim for  
139 unpaid minimum wages, the terms of which must be consistent with  
140 the contents of the notice.

141 (c)1. Upon prevailing in an action brought pursuant to this  
142 section, aggrieved persons shall recover the full amount of any  
143 unpaid back wages unlawfully withheld plus the same amount as  
144 liquidated damages and shall be awarded reasonable attorney's  
145 fees and costs. As provided under the Fair Labor Standards Act,

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146 pursuant to s. 11 of the Portal-to-Portal Act of 1947, 29 U.S.C.  
147 s. 260, if the employer proves by a preponderance of the evidence  
148 that the act or omission giving rise to such action was in good  
149 faith and that the employer had reasonable grounds for believing  
150 that his or her act or omission was not a violation of s. 24,  
151 Art. X of the State Constitution, the court may, in its sound  
152 discretion, award no liquidated damages or award any amount  
153 thereof not to exceed an amount equal to the amount of unpaid  
154 minimum wages. The court shall not award any economic damages on  
155 a claim for unpaid minimum wages not expressly authorized in this  
156 section.

157 2. Upon prevailing in an action brought pursuant to this  
158 section, aggrieved persons shall also be entitled to such legal  
159 or equitable relief as may be appropriate to remedy the violation  
160 including, without limitation, reinstatement in employment and  
161 injunctive relief. However, any entitlement to legal or equitable  
162 relief in an action brought under s. 24, Art. X of the State  
163 Constitution shall not include punitive damages.

164 (d) Any civil action brought under s. 24, Art. X of the  
165 State Constitution and this section shall be subject to s.  
166 768.79.

167 (7) The Attorney General may bring a civil action to  
168 enforce this section. The Attorney General may seek injunctive  
169 relief. In addition to injunctive relief, or in lieu thereof, for  
170 any employer or other person found to have willfully violated  
171 this section, the Attorney General may seek to impose a fine of  
172 \$1,000 per violation, payable to the state.

173 (8) The statute of limitations for an action brought  
174 pursuant to this section shall be for the period of time

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175 specified in s. 95.11, from the date the alleged violation  
176 occurred.

177 (9) Actions brought pursuant to this section may be brought  
178 as a class action pursuant to Rule 1.220, Florida Rules of Civil  
179 Procedure. In any class action brought pursuant to this section,  
180 the plaintiffs shall prove, by a preponderance of the evidence,  
181 the individual identity of each class member and the individual  
182 damages of each class member.

183 (10) This section shall constitute the exclusive remedy  
184 under state law for violations of s. 24, Art. X of the State  
185 Constitution.

186 (11) Except for calculating the adjusted state minimum wage  
187 and publishing the initial state minimum wage and any annual  
188 adjustments thereto, the authority of the Agency for Workforce  
189 Innovation in implementing s. 24, Art. X of the State  
190 Constitution, pursuant to this section, shall be limited to that  
191 authority expressly granted by the Legislature.

192 Section 3. Sections 448.01-448.110, Florida Statutes, are  
193 designated as part I of chapter 448, Florida Statutes, and  
194 entitled "Terms and Conditions of Employment."

195 Section 4. If any provision of this act or its application  
196 to any person or circumstance is held invalid, the invalidity  
197 shall not affect the other provisions or applications of the act  
198 which can be given effect without the invalid provision or  
199 application, and to this end the provisions of this act are  
200 severable.

201 Section 5. This act shall take effect upon becoming a law.  
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